

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 28, 2017**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2016AP25  
STATE OF WISCONSIN**

**Cir. Ct. No. 2014CV32**

**IN COURT OF APPEALS  
DISTRICT III**

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**CHAD WEBSTER AND BRENDA WEBSTER,**

**PLAINTIFFS-RESPONDENTS,**

**V.**

**DANIEL KRIZAN, BEVERLY KRIZAN AND SCOTT KRIZAN,**

**DEFENDANTS-RESPONDENTS.**

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**TRAVIS P. KRIZAN AND RONALD V. KRIZAN,**

**PLAINTIFFS-APPELLANTS,**

**V.**

**DANIEL KRIZAN, BEVERLY KRIZAN, SCOTT KRIZAN,  
DALE KRIZAN, CHAD WEBSTER AND BRENDA WEBSTER,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from a judgment of the circuit court for Taylor County:  
DOUGLAS T. FOX, Judge. *Affirmed*.

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Travis and Ronald Krizan appeal a summary judgment entered in favor of Chad and Brenda Webster. They argue the circuit court erred by granting the Websters' motion for summary judgment while denying their cross-motion for summary judgment. We reject their arguments and affirm the judgment.

### BACKGROUND

¶2 In April 2014, the Websters sued Daniel Krizan, Beverly Krizan and Scott Krizan,<sup>1</sup> requesting that the circuit court order the Krizans to convey certain farm property to the Websters in accordance with a May 2013 offer to purchase the property. Subsequently, Travis Krizan and Ronald Krizan moved to intervene in the lawsuit pursuant to WIS. STAT. § 803.09 (2013-14).<sup>2</sup> They filed an amended complaint against Daniel, Beverly, Scott and the Websters, requesting that the circuit court order Daniel, Beverly and Scott to convey certain farm property to Travis and Ronald pursuant to a March 2014 offer to purchase the same property. Travis and Ronald then filed a second amended complaint, which named Dale Krizan as an additional defendant. Travis and Ronald later filed a third amended

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<sup>1</sup> Because multiple parties share a surname, we refer to them by their first names for clarity.

<sup>2</sup> The motion to intervene was filed in 2014—and the two offers to purchase property in this case were signed in 2013 and 2014. Therefore, all references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

complaint raising three new claims: (1) fraudulent representation; (2) theft; and (3) for an equitable mortgage.

¶3 The Websters moved for summary judgment, which was supported by Daniel, Beverly, Scott and Dale. Prior to supporting this motion, Daniel, Beverly and Scott withdrew their answer and amended answer to the Webster complaint. Travis and Ronald also moved for summary judgment.

¶4 The circuit court granted the Websters' motion for summary judgment and denied Travis and Ronald's cross-motion for summary judgment. The court concluded that regardless of whether either the May 2013 offer or March 2014 offer complied with the requirements set forth in WIS. STAT. § 706.02(1), the May 2013 offer to purchase controlled because: (1) it was first in time; and (2) Daniel, Beverly, Scott and Dale affirmed the May 2013 offer in their pleadings. Travis and Ronald now appeal.

## DISCUSSION

¶5 Summary judgment shall be granted if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. WIS. STAT. § 802.08(2) (2015-16). "We review the grant or denial of summary judgment de novo, and we apply the same standard as does the trial court." *Mach v. Allison*, 2003 WI App 11, ¶14, 259 Wis. 2d 686, 656 N.W.2d 766.

¶6 Like the circuit court, we conclude the Websters are entitled to summary judgment dismissing the third amended complaint.<sup>3</sup> Travis and Ronald argue that the circuit court erred in concluding the Websters' May 2013 offer to purchase the property was a valid and enforceable contract because that offer to purchase did not comply with one or more requirements of Wisconsin's statute of frauds. *See* WIS. STAT. § 706.02(1)(a)-(g) (setting forth statutory requirements for a valid real estate transaction). As a result, they contend their March 2014 offer to purchase the property must be enforced. However, only parties to the May 2013 offer—and their privies—may invoke the protection of the statute of frauds. *See* 73 AM. JUR. 2D STATUTE OF FRAUDS §§ 462, 464 (2012); *cf. Sussex Tool & Supply, Inc. v. Mainline Sewer & Water, Inc.*, 231 Wis. 2d 404, 409, 605 N.W.2d 620 (Ct. App. 1999) (“The general rule is that only a party to a contract may enforce [that contract].”). Since Travis and Ronald are not parties (or privies) to the May 2013 offer, they may not invoke the protection afforded by § 706.02(1) to invalidate that agreement.<sup>4</sup>

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<sup>3</sup> Before the circuit court, Travis and Ronald argued they were entitled to an equitable mortgage. However, they do not raise that argument on appeal. Thus, we deem it abandoned. *See Reiman Assocs. v. R/A Adver., Inc.*, 102 Wis. 2d 305, 306 n.1, 306 N.W.2d 292 (Ct. App. 1981). We also note that, on appeal, Daniel, Beverly, Scott and Dale cite *Foxwood Estates Homeowner's Association v. Foxwood Estates, LLC*, No. 2013AP1103, unpublished slip op. (WI App May 13, 2015), an unpublished per curiam opinion, for persuasive value in violation of WIS. STAT. RULE 809.23(3)(a)-(b) (2015-16). We admonish counsel that future violations of the Rules of Appellate Procedure may result in sanctions. *See* WIS. STAT. RULE 809.83(2) (2015-16).

<sup>4</sup> To the extent Travis and Ronald argue the Websters' May 2013 offer to purchase the property is void and unenforceable because of other alleged deficiencies in the agreement unrelated to the requirements set forth in WIS. STAT. § 706.02(1), we similarly conclude Travis and Ronald lack standing to raise those issues. *Cf. Sussex Tool & Supply, Inc. v. Mainline Sewer & Water, Inc.*, 231 Wis. 2d 404, 409, 605 N.W.2d 620 (Ct. App. 1999) (“The general rule is that only a party to a contract may enforce it.”).

¶7 Alternatively, Travis and Ronald argue their March 2014 offer to purchase the property must be equitably enforced under WIS. STAT. § 706.04. Section 706.04 provides that a real estate transaction which does not comply with one or more requirements of Wisconsin’s statute of frauds “may” be enforced by a court under equitable doctrines, so long as “the elements of the transaction are clearly and satisfactorily proved” and other certain conditions are satisfied. *See* WIS. STAT. § 706.04. By utilizing the word “may,” the statute permits—but does not require—a court to enforce a real estate transaction under equitable doctrines. *See Heritage Farms, Inc. v. Markel Ins. Co.*, 2012 WI 26, ¶32, 339 Wis. 2d 125, 810 N.W.2d 465 (noting that “we generally construe the word ‘may’ as permissive”).

¶8 It is, of course, undisputed that the Websters’ May 2013 offer to purchase the property was first in time and subsequently affirmed by Daniel, Beverly, Scott, Dale and the Websters in their pleadings. Furthermore, Travis and Ronald lack standing to raise issues regarding the enforceability of the May 2013 offer. *See supra* ¶6 & n.4. Therefore, the circuit court properly: (1) declined to equitably enforce Travis and Ronald’s March 2014 offer to purchase the property under WIS. STAT. § 706.04; and (2) entered summary judgment in favor of the Websters dismissing the third amended complaint.

¶9 Finally, Travis and Ronald argue that if their March 2014 offer is not equitably enforced under WIS. STAT. § 706.04, Daniel, Beverly, Scott and Dale will be unjustly enriched as a result of Travis and Ronald spending \$430,000 to satisfy part of the outstanding balance on the property’s mortgage. However, this concern about unjust enrichment is obviated by the circuit court’s December 21, 2015 order, which requires that “the closing of the Webster offer is to proceed

with dispatch” and “the net proceeds up to \$430,000.00 are to be remitted to [Travis and Ronald’s] counsel’s Trust Account after closing.”

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2015-16).

